

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

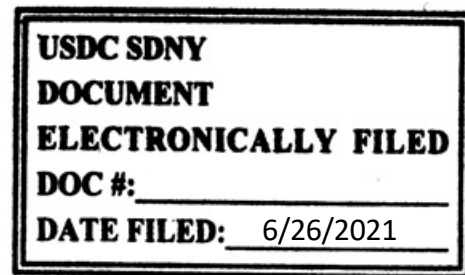
Ashu Shukla,

Plaintiff,

-against-

Deloitte Consulting LLP,

Defendant.



1:19-cv-10578 (AJN) (SDA)

**AMENDED AND SUPPLEMENTAL
ORDER**

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, on June 21, 2021, Defendant filed a letter requesting that the Court “require plaintiff to appear for his deposition on July 23, 27, or 28 during regular business hours (EST)” (Def.’s 6/21/2021 Ltr., ECF No. 274, at 1); and

WHEREAS, on June 22, 2021, the Court entered an Order providing: “Plaintiff shall file any response [to Defendant’s 6/21/21 letter] no later than 11:59 p.m. EDT on Thursday, June 25, 2021.^[1] If Plaintiff fails to timely respond, or if Plaintiff’s response fails to propose deposition dates between July 17 and July 30, 2021, the Court intends to Order Plaintiff to appear for deposition for up to seven hours on July 23, 27 and/or 28 between the hours of 9:00 a.m. and 12:30 p.m. EDT” (6/22/21 Order, ECF No. 275); and

WHEREAS, later on June 22, 2021, Plaintiff made what he denominates as a “Text Only Filing” challenging my “authority to order depositions” purportedly because “paper discovery on this case is not over” (see ECF No. 276); and

¹ As set forth below, the date listed of June 25 was in error, as Thursday was June 24.

WHEREAS, on Friday, June 25, 2021, the Court entered an Order stating that “the deadline set in my June 22 Order has passed and Plaintiff has not filed a response to Defendant’s June 21 letter” (*see* 6/25/21 Order, ECF No. 283); and

WHEREAS, later on June 25, 2021, Plaintiff filed a motion to vacate the 6/25/21 Order, stating, in part, that the 6/25/21 Order was issued prior to the deadline for his response; and

WHEREAS, there was an error in the Court’s 6/22/21 Order, listing Plaintiff’s response deadline as “Thursday, June 25, 2021,” instead of Thursday, June 24, 2021, such that it is possible that Plaintiff believed that his response deadline was Friday, June 25, 2021, and not Thursday, June 24, 2021; and

WHEREAS, as of Saturday, June 26, 2021, Plaintiff has failed to respond to Defendant’s 6/21/21 letter and has failed to propose deposition dates between July 17 and July 30, 2021.

NOW, THEREFORE, it is hereby ORDERED, as follows:

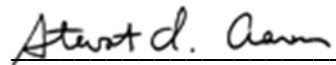
1. The Court’s 6/25/21 Order hereby is vacated and this Amended and Supplemental Order is issued in its place and stead.
2. Plaintiff shall appear for a remote deposition for up to seven hours on July 23, 27 and/or 28 between the hours of 9:00 a.m. and 12:30 p.m. EDT.²
3. If Plaintiff fails to make himself available for, and/or refuses to proceed with, his deposition on the dates above, I shall recommend that this case be dismissed, for failure to obey discovery orders pursuant to Federal Rule of Civil Procedure 37(b)

² Even if Plaintiff were correct in his assertion that Defendant should be required to produce additional documents to him, Plaintiff has no valid excuse for refusing to appear for his own deposition. In any event, the Court’s Order requiring depositions to proceed merely states that “document discovery is nearly complete” (*see* 6/14/21 Order, ECF No. 268, ¶ 6) and does not foreclose the parties from seeking additional documents based upon deposition testimony.

and/or failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Lewis v. Marlow*, No. 17-CV-08101 (KMK), 2021 WL 2269553, at *4 (S.D.N.Y. June 3, 2021); *Henry v. Prishtina Constr. Designs, Inc.*, No. 17-CV-05041 (ILG) (RER), 2018 WL 5984866, at *3 (E.D.N.Y. Oct. 22, 2018), *report and recommendation adopted*, 2018 WL 5983378 (E.D.N.Y. Nov. 14, 2018).

SO ORDERED.

Dated: New York, New York
June 26, 2021

A handwritten signature in black ink, reading "Stewart D. Aaron", is written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge